

LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U. S.

FILED

SEP 28 1951

SUPREME COURT OF THE UNITED STATES

October Term, 1951

CHARLES E. MOORE, CLERK

No. 1

GEORGIA RAILROAD & BANKING COMPANY

Appellant

vs.

**CHARLES D. REDWINE,
STATE REVENUE COMMISSIONER**

Appellee

**BRIEF IN OPPOSITION TO MOTION OF
APPELLANT TO TERMINATE THE
CONTINUANCE BY INTERVENORS
AMICI CURIAE**

**Victor Davidson, Irwinton, Ga.
Special Attorney for Intervenor.**

**MORGAN COUNTY
OGLETHORPE COUNTY
GREENE COUNTY
CITY OF GREENSBORO
CITY OF UNION POINT**

**Jos. G. Faust, Attorney,
Greensboro, Ga.**

WARREN COUNTY

**Joe H. Terrell, Attorney,
Warrenton, Ga.**

CLARKE COUNTY

**Carlisle Cobb, Attorney,
Athens, Ga.**

McDUFFIE COUNTY

**J. Glenn Stovall, Attorney,
Thomson, Ga.**

NEWTON COUNTY

**C. C. King, Attorney,
Covington Ga.**

ROCKDALE COUNTY

**William T. Dean,
J. H. McCall, Attorneys,
Conyers, Ga.**

WALTON COUNTY

**A. M. Kelley, Attorney,
Monroe, Ga.**

DeKALB COUNTY

**Julius A. McCurdy, Attorney,
Decatur, Ga.**

CITY OF MADISON

TOWN OF RUTLEDGE

**A. F. Jenkins, Attorney,
Madison, Ga.**

TALIAFERRO COUNTY

**Osgood O. Williams, Attorney,
Crawfordville, Ga.**

COLUMBIA COUNTY

**J. F. Hardin, Attorney,
Augusta, Ga.**

CITY OF AUGUSTA,

**William P. Congdon, Attorney,
Augusta, Ga.**

TABLE OF CONTENTS

Brief of Intervenor Opposing Motion of Appellant	2
Reasons for Denial of Motion	2
Remedy of Affidavit of Illegality	3
Suit for Refund of Taxes	4
Appendix	7
Appellant's Injunction Against Appellee and Modification	7

AUTHORITIES CITED

92-8426-4 P.P. Annotated Code of Georgia	3
92-8436 P.P. Annotated Code of Georgia	4

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. 1

GEORGIA RAILROAD & BANKING COMPANY,

Appellant,

vs.

CHARLES D. REDWINE,
STATE REVENUE COMMISSIONER,

Appellee

TO THE HONORABLE THE CHIEF JUSTICE AND
ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

The Intervenor Amici Curiae urgently pray that Appellant's Motion to Terminate the Continuance be denied for the reasons hereinafter set out.

Said Intervenor Amici Curiae are the main parties at interest in this effort to collect taxes. The taxing subdivisions being entitled to receive all these taxes except approximately \$70,000.00 and interest thereon due the State of Georgia.

REASONS FOR DENIAL OF MOTION

The Motion shows that Appellant has deliberately failed to comply with the order of this court entered February 20, 1950:

"Per Curiam: Inasmuch as the Attorney General of Georgia stated at the bar of this Court that plain, speedy and efficient state remedies were available to appellant, the cause is ordered continued for such period as will enable appellant with all convenient speed to assert such remedies."

and refused to avail itself of the methods provided by the laws of Georgia for the assertion of its remedies in the particulars hereinafter set out. It shows that Appellant has failed to avail itself of the Remedy of:

(a) *Affidavit of Illegality.*

(b) *Making a Partial Payment of the Taxes and Suing for Refund.*

We most respectfully urge that this question as to exemption claimed by Appellant should be determined by the courts of Georgia, and jurisdiction should not be assumed by the Federal Courts until Appellant has exhausted its State remedies. Of the three or four remedies argued by the State Attorney General before this court in January of 1950 as being available to Appellant, Appellant has used only one, that of appeal from the assessment by the State Revenue Commissioner. The Supreme Court of Georgia in a split decision held that appeal was not available as a remedy, three judges dissenting, including the Chief Justice. The Superior Court of Richmond County having held that the Appellant had no tax exemption.

REMEDY BY AFFIDAVIT OF ILLEGALITY

Appellant's Motion fails to state any valid reason why it has not used the remedy of Affidavit of Illegality. This is specifically provided by Code Section 92-8426-4 P.P. Annotated Code of Georgia, as amended by the Act of 1943, which is as follows:

"Provided, however, that nothing herein contained, and no provision of this law (§§ 92-8426.4 to 92-8426.6), shall be construed to deprive a taxpayer against whom an execution for taxes has been issued under an assessment by the State Revenue Commissioner of the right to resist enforcement of the same by affidavit of illegality."

Appellant's Motion likewise fails to show that when the Appeal was made of this case from the District Court for the Northern District of Georgia to the Supreme Court of the United States, it applied for and obtained an injunction against Appellee pending the Appeal, so that Appellee has his hands tied and can take no further steps towards collecting the taxes in issue, a copy of the injunction and the modification being attached in the Appendix, page 8.

Intervenors have never had their day in court as a legal party to any litigation concerning this alleged tax exemption. Under the laws of Georgia, the taxing subdivisions can take no steps towards collecting these taxes until an execution is issued and sent to them by the State Revenue Commissioner, and then they can have the sheriff or other levying officer to make a levy. Appellant with its injunction has thus denied Intervenors Amici Curiae due process of the law by preventing them from obtaining the executions to levy. The other taxpayers of these subdivisions are thus being forced to bear all the burdens of government and are denied the equal protection of the laws guaranteed by the Fourteenth Amendment. If Appellant is seeking an early decision, then why does it not modify the injunction and permit Appellee to proceed with his executions and allow Intervenors Amici Curiae to test out their rights?

SUIT FOR REFUND OF TAXES

The Motion to terminate the Continuance fails to allege that Appellant has availed itself of the remedy of a suit for refund. Code Sections 92-8436 P.P. Annotated Code

of Georgia authorizes suits for refund of taxes illegally or erroneously collected. There is nothing to prevent Appellant from making a small partial payment of the taxes assessed and immediately afterwards filing suit for refund of them.

We remind the court that this is the second motion Appellant has filed to terminate the continuance, the other having been filed even while the appeal was pending in the courts of Georgia. For some reason Appellant seems to want to avoid a decision by the courts of Georgia.

If Appellant is really desirous of an early decision by the courts so as to stop the interest, and will have the injunction modified so that the State Revenue Commissioner can issue and send to Intervenor only enough executions to test out the issues, Intervenor will have a levy made by their levying officers the same day the executions are received and Appellant can file its affidavit of illegality at once and a decision can be made without delay.

Intervenor earnestly pray this court to consider their rights and the rights of thousands of their citizens, even though neither are allowed by the laws of Georgia to become parties to this case.

Respectfully submitted by the following Counties and municipalities:

Signed

Victor Davidson, Irwinton, Ga.

Special Attorney for Intervenor.

MORGAN COUNTY
OGLETHORPE COUNTY
GREENE COUNTY
CITY OF GREENSBORO
CITY OF UNION POINT

} Jos. G. Faust, Attorney,
Greensboro, Ga.

WARREN COUNTY

Joe H. Terrell, Attorney,
Warrenton, Ga.

CLARKE COUNTY

Carlisle Cobb, Attorney,
Athens, Ga.

McDUFFIE COUNTY

J. Glenn Stovall, Attorney,
Thomson, Ga.

NEWTON COUNTY

C. C. King, Attorney,
Covington, Ga.

ROCKDALE COUNTY

William T. Dean, J. H.
McCalla, Attorneys, Conyers, Ga.

WALTON COUNTY

A. M. Kelley, Attorney,
Monroe, Ga.

DeKALB COUNTY

Julius A. McGurdy, Attorney,
Decatur, Ga.

CITY OF MADISON
TOWN OF RUTLEDGE

} A. F. Jenkins, Attorney,
Madison, Ga.

TALIAFERRO COUNTY

Osgood O. Williams,
Attorney, Crawfordville, Ga.

COLUMBIA COUNTY

J. F. Hardin, Attorney,
Augusta, Ga.

CITY OF AUGUSTA

William P. Congdon,
Attorney, Augusta, Ga.

APPENDIX

Injunction Against Appellee

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAH DIVISION

GEORGIA RAILROAD & BANK-
ING CO.

vs.

CHARLES D. REDWINE, STATE
REVENUE COMMISSIONER

CIVIL ACTION

No. 185

ORDER GRANTING INJUNCTION PENDING APPEAL

It appearing to the Court that complainant in the above stated case is appealing from the judgment of this Court entered August 10, 1949, dismissing the complaint, and that defendant is proceeding to levy the tax sought to be enjoined pending the appeal and will proceed to levy and collect such tax unless restrained, and it appearing that such levy and collection pending appeal may irreparably damage complainant and that the grant of such injunction pending appeal will not damage defendant, since the tax, if due, is a first lien on all property of complainant and bears interest at 7% per annum,

IT IS THEREFORE ORDERED that defendant be enjoined until final determination of the appeal of complainant, or until further order of this Court, from assessing or collecting any tax, except as provided in the charter of complainant, on the line of complainant between Augusta, Georgia, and Atlanta, Georgia, the line between Union Point and Athens, Georgia, and all appurtenances thereto.

The injunction hereby issued shall not become effective unless and until the complainant, within ten days from the date hereof, files with the Clerk of this Court in this cause,

and to be effective in any and all subsequent litigation, a stipulation waiving on behalf of the taxing authorities of Georgia the benefit of any statute of limitations from this date forward, to the same extent and effect as if the State had levied at this time the tax *fi. fa.* Upon the filing of such stipulation the injunction shall be and become effective in accordance with its other terms.

This the 3rd day of October, 1949.

LEON McCORD

United States Circuit Judge

ROBERT L. RUSSELL

United States District Judge

F. M. SCARLETT

United States District Judge

In 1950 the above injunction was amended as follows:

Order Modifying Injunction Pending Appeal

The Supreme Court of the United States on appeal having entered the following order:

"Inasmuch as the Attorney General of Georgia stated at the bar of this Court that plain, speedy and efficient state remedies were available to Appellant, the cause is ordered continued for such period as will enable Appellant with all convenient speed to assert such remedies,"

It is hereby ordered that the injunction pending appeal entered on October 2, 1949, be and the same is hereby modified in the following respects:

1. The defendant, Charles D. Redwine, who is State Revenue Commissioner of Georgia, is permitted to proceed to assess the valuation of the property of plaintiff, Georgia Railroad & Banking Company, and to assess the ad valorem taxes claimed by him to be due on plaintiff's property.

2. The defendant, Charles D. Redwine, who is State Revenue Commissioner, shall be permitted, however, to issue executions against plaintiffs on such assessment only in the event Plaintiff fails to take an appeal or undertake to appeal from such assessment (whether such appeal be validly taken or not) to the Superior Court of Georgia in the manner provided by the statute of Georgia."

I, Victor Davidson, Special Attorney for Intervenor,
Amici Curiae, certify that I have this day served a copy of
the within brief on Honorable Eugene Cook, Attorney
General of Georgia, Counsel for Appellee, and on Hon-
orable Robert B. Troutman, Honorable Furman Smith, and
Spalding, Sibley, Troutman & Kelly, Counsel for Appellant,
by mailing copies of same to their addresses.

This ---- day of September, 1951.

Victor Davidson
Special Counsel for Intervenor
Amici Curiae